

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KORWIN GUSTAVUS JONES,

Defendant-Appellant.

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UNPUBLISHED

January 27, 2005

No. 250578

Wayne Circuit Court

LC No. 03-005238-03

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

MEMORANDUM.

Defendant was convicted of possession of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii). He was sentenced to 1 to 4 years in prison. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the prosecution presented insufficient evidence on possession to support his conviction. We disagree. This Court reviews claims of insufficient evidence de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), viewing the evidence in a light most favorable to the prosecution. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Possession may either be actual or constructive. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748, amended 441 Mich 1201 (1992). Constructive possession may be found where the defendant has the power to exercise dominion or control over the substance or if there is proximity to the substance with indicia of control. *People v Sammons*, 191 Mich App 351, 371; 478 NW2d 901 (1992). Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *People v Hardiman*, 466 Mich 417, 429; 646 NW2d 158 (2002). “[C]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband.” *Wolfe, supra* at 521.

Viewed in the light most favorable to the prosecution, the evidence presented at trial was sufficient for a jury to infer constructive possession. Police officers observed defendant placing an item into the bush where marijuana was recovered a short time later. The marijuana was packaged for street level distribution and defendant was observed engaging in some sort of hand-to-hand transaction with a motorist in a neighborhood where drug trafficking has been taking place for the last seven years. While money was not found on defendant’s person, this fact does not negate his apparent control over the marijuana in the bush.

Defendant suggests that the marijuana may have already been in the bush and that defendant in fact placed a different item in the bush. However, officers did not remove anything else from the bush and did not testify as to whether another item was observed in the bush. While this does not entirely negate defendant's theory, the prosecution does not need to negate every theory of innocence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Furthermore, there is no evidence that the marijuana in the bush belonged to the two other men observed engaging in hand-to-hand drug transactions. Indeed, the actions of these men and defendant are consistent with defendant's power to exercise dominion and control over the item in the bush.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello